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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION N
09/738,868	12/15/2000	Jeffrey E. Stahmann	279.327US1	9777

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EXAMINER

MULLEN, KRISTEN DROESCH

ART UNIT	PAPER NUMBER
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3762

DATE MAILED: 10/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/738,868

Applicant(s)

STAHMANN ET AL.

Examiner

Kristen Mullen (formerly  
Droesch)

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 6/8/04 (amendment).
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-40, 45 and 46 is/are allowed.
- 6) ☒ Claim(s) 41 is/are rejected.
- 7) ☒ Claim(s) 42-44 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 June 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

*Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claim 41 is rejected under 35 U.S.C. 102(e) as being anticipated by Conley et al. (6,415,175).

Regarding claim 41, Conley et al. shows a device (60) with a processor (76), communication circuitry (62, 106) a display (102), and a memory (56) encoded with software executable by the processor to retrieve data from the communication circuitry regarding the cardiac events occurring at the two or more sites (atrium and ventricle); form a statistical distribution for each of the two or more sites (atrium and ventricle); and display the statistical distribution for each of the two or more sites (atrium and ventricle) in a histogram; the histogram including a plurality of histogram bins including a representation for at least a portion of the statistical distribution for each of the two or more sites (Figs. 6A-6B; Col. 9, lines 13-58)

The functional language and statements of intended use have been carefully considered but are not considered to impart any further structural limitations over the prior art. Specifically, the statements of intended use that have not been considered because they are applicable to the type of data and the locations of the measurements made by the medical device. The medical device has not been positively recited as an element of the claims. The Conley et al. device

Art Unit: 3762

would be capable of displaying this type of data in histograms, provided this data was received from a medical device.

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

***Allowable Subject Matter***

3. Claims 1-40, and 45-46 are allowed.
4. Claims 42-44 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Regarding claims 21-24, the prior art of record fails to teach or suggest a device including communication circuitry adapted to communicate with a medical device; a display; and a processor adapted to provide a histogram of cardiac event data on the display as two or more statistical distributions for two or more sites where the histogram includes a plurality of histogram bins, and at least one of the histogram bins includes a representation for a first statistical distribution for a first site *and* a second statistical distribution for a second site, and the statistical distributions being selected from: a left ventricle distribution and right ventricle distribution, two left ventricle distributions, two right ventricle distributions, a left atrium distribution and right atrium distribution, two left atrium distributions, and two right atrium

Art Unit: 3762

distributions. In other words the processor is adapted to provide a histogram having at least a plurality of bins and where at least one of the bins represents either a left ventricle distribution and right ventricle distribution, two left ventricle distributions for a first site and a second site, two right ventricle distributions for a first site and a second site, a left atrium distribution and right atrium distribution, two left atrium distributions for a first site and a second site, and two right atrium distributions for a first site and a second site.

### *Response to Arguments*

5. Applicant's arguments filed 6/8/04 have been fully considered but they are not persuasive.

With respect to claim 41, the examiner points out that the language of claim 41 does not require that statistical distribution for the two sites be displayed in the same histogram.

### *Conclusion*

1. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Art Unit: 3762

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristen Mullen (formerly Droesch) whose telephone number is 703-605-1185. The examiner can normally be reached on 10:30 am-6:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on 703-308-5181. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



kdm



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